

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RANDY C. WEISSERT,

Plaintiff,

v.

NICOLE M. COOK, THOMAS M.
PHILLIPS and BRIAN GRILL,

Defendants.

Case No. 1:05-CV-335

Hon. Richard Alan Enslen

ORDER

This matter is before the Court on Plaintiff Randy C. Weissert's Motion for Default Judgment Against Defendants Nicole M. Cook and Thomas M. Phillips pursuant to Federal Rule of Civil Procedure 55(b)(2). In support of the Motion, Plaintiff submitted an affidavit detailing and documenting the amount of damages he suffered as a result of Defendants Cook and Phillips' conduct. Accordingly, the Court deems oral argument on the Motion unnecessary. FED. R. CIV. P. 55(b)(2).

In this lawsuit, Plaintiff has sued Defendants Cook, Phillips, and Brian Grill on five theories of joint and several liability.¹ Default was entered against Defendants Cook and Phillips on May 1, 2006. Defendant Grill, however, answered Plaintiff's Complaint and has otherwise defended himself in this Court. Consequently, the Court cannot enter default judgment against the defaulting Defendants because liability has been alleged jointly and severally against all Defendants. This concept was first explained by the United States Supreme Court in *Frow v. Del La Vega*, 82 U.S.

¹ Those being: (1) a violation of 42 U.S.C. § 1983; (2) abuse of process; (3) intentional infliction of emotional distress; (4) civil conspiracy; and (5) unlawful concerted action.

552, 554 (1872), *i.e.*, that a contrary rule may expose the law to incongruous judgments. This rule has been applied in this Circuit when assessing the joint and several liability of defaulting and non-defaulting defendants. *See Kimberly v. Coastline Coal Corp.*, 857 F.2d 1474, 1988 WL 93305, at *3 (6th Cir. 1988) (unpublished table decision).

THEREFORE, IT IS HEREBY ORDERED that Plaintiff Randy C. Weissert's Motion for Default Judgment Against Defendants Nicole M. Cook and Thomas M. Phillips (Dkt. No. 36) is **DENIED WITHOUT PREJUDICE**, pending trial or resolution of claims against Defendant Brian Grill.

DATED in Kalamazoo, MI:
June 19, 2006

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE